

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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AZ CORP COMMISSION
DOCKET CONTROL

ARIZONA CORPORATION COMMISSION

DATE: AUGUST 7, 2009

DOCKET NOS: E-01933A-07-0402 and E-01933A-05-0650

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Order on:

TUCSON ELECTRIC POWER COMPANY
(EXTENSION OF WAIVERS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 17, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 25, 2009 and AUGUST 26, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

E-01933A-07-0402

AUG 17 2009



A handwritten signature in black ink, appearing to read "Ernest G. Johnson".

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 TUCSON ELECTRIC POWER COMPANY FOR
10 THE ESTABLISHMENT OF JUST AND
11 REASONABLE RATES AND CHARGES
12 DESIGNED TO REALIZE A REASONABLE
13 RATE OF RETURN ON THE FAIR VALUE OF
14 ITS OPERATIONS THROUGHOUT THE STATE
15 OF ARIZONA.

DOCKET NO. E-01933A-07-0402

16 IN THE MATTER OF THE FILING BY TUCSON
17 ELECTRIC POWER COMPANY TO AMEND
18 DECISION NO. 62103.

DOCKET NO. E-01933A-05-0650

DECISION NO. _____

19 ORDER

20 Open Meeting
21 August 25 and 26, 2009
22 Phoenix, Arizona

23 **BY THE COMMISSION:**

24 * * * * *

25 Having considered the entire record herein and being fully advised in the premises, the
26 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

27 FINDINGS OF FACT

28 1. In Decision No. 70628 (December 1, 2008), the Commission approved a Settlement
Agreement ("2008 Settlement Agreement") entered into by Tucson Electric Power Company ("TEP"
or the "Company"), the Commission's Utilities Division ("Staff") and various other parties, to
resolve a TEP rate case.

2. The 2008 Settlement Agreement provides at paragraph 14.9 as follows:

The Signatories recognize that certain waivers were provided to TEP
under the 1999 Settlement Agreement. As these waivers were previously

evaluated in the context of the then-contemplated transition to competition, they may not continue to be in the public interest. The Signatories agree that TEP shall file an application with the Commission addressing all of these waivers within ninety (90) days of the issuance of a Commission order approving this Agreement. In that proceeding, the Commission shall evaluate whether these waivers remain appropriate.

3. On March 2, 2009, TEP filed an Application for Extension of Waivers.

4. On May 20, 2009, Staff filed its Staff Report recommending approval of some of the requested waiver extensions and against others.

5. TEP did not file a Response or Objection to the Staff Report.

6. TEP provides electric utility service to approximately 400,000 customers in Pima and Cochise Counties in Arizona.

7. Unisource Energy Corporation ("UniSource") is the parent company of TEP. TEP has three subsidiaries, Escavada Company ("Escavada"), San Carlos Resources, Inc. ("San Carlos"), and Tucsonel, Inc. ("Tucsonel"). Escavada is in the business of owning non-utility real estate in Arizona related to UniSource's business. San Carlos acquires, constructs, holds and maintains electric power production facilities. Tucsonel holds an undivided ownership interest in Springerville Generation Station. For the year ended 2008, TEP reported revenues of \$1.1 billion, while Escavada reported revenues of \$94,000. Neither San Carlos nor Tucsonel reported revenues for the year.

8. In Decision No. 56844 (March 14, 1990), the Commission adopted rules to oversee the affiliated interests of public service corporations, A.A.C. R14-2-801 through 806, (referred to as the "Public Utility Holding Company and Affiliated Interest Rules," "Holding Company Rules", "Affiliated Interest Rules" or the "Rules").¹

9. On April 26, 1990, in Decision No. 56890, the Commission granted a stay of Decision No. 56844 because the Commission anticipated litigation over the Rules. In Decision No. 58063

¹ The Affiliated Interest Rules were inspired by the circumstances of TEP and Arizona Public Service ("APS"). In the late 1980's and early 1990's TEP suffered a great degradation in its financial health after the spin-off of a generator, imprudent fuel contracts and losses from its investment subsidiaries. TEP was forced into an involuntary bankruptcy under Chapter 11, but ultimately reached an agreement with creditors and shareholders and instituted a restructuring plan which resulted in a capital structure of over 100 percent debt. About the same time, Pinnacle West Capital Corporation ("Pinnacle West"), parent of APS, suffered from real estate losses and losses from its investment in Merabank, a failed thrift company. Pinnacle West used the common stock of APS to secure some of its debt in order to extricate itself from its financial problems.

1 (November 3, 1992), the Commission lifted the stay for A.A.C. R14-2-801, -802, -805 and -806. The
2 Commission partially lifted the stay for A.A.C. R14-2-803, with the effect of limiting the requirement
3 to file a notice of intent for certain transactions only to amounts in excess of "exempt amounts." For
4 example, according to the Staff Report, TEP with total utility assets of \$1.5 billion in its last rate
5 case, has the ability to increase or decrease its financial interest in an affiliate by \$25 million per year
6 without Commission approval.

7 10. During the mid- and late- 1990's, the Commission and Arizona's electric utilities took
8 steps toward instituting retail electric competition. In these efforts, TEP planned to divest its
9 generation assets. Some of the Holding Company Rules would have limited TEP's flexibility in this
10 undertaking, and as a result, the Commission issued a series of orders over several years that partially
11 approved or denied TEP's applications for waivers of the Holding Company Rules.

12 11. In Decision No. 62103 (November 30, 1999), the Commission approved the 1999
13 Settlement Agreement, which resolved issues relating to TEP's rate case and the transition to electric
14 competition. The 1999 Settlement Agreement modified some of TEP's previous waivers of the
15 Holding Company Rules and "waived" compliance with some previous Commission Decisions.
16 Many of the waivers in the 1999 Settlement Agreement were related to the Commission's Retail
17 Electric Competition Rules and were contingent upon TEP's divestiture of its generation assets—an
18 event that did not occur. Others became effective upon the Commission's approval of the 1999
19 Settlement Agreement.

20 12. In Decision No. 66028 (July 3, 2003) the Commission approved UniSource's
21 acquisition of Citizens Utilities' gas and electric operations, which resulted in UniSource becoming
22 the parent of UNS Gas, Inc. and UNS Electric, Inc, which provide gas and electric utility service,
23 respectively, in Mohave and Santa Cruz Counties.

24 13. TEP's current application is in response to the 2008 Settlement Agreement's
25 requirement to address only the waivers granted through the 1999 Settlement Agreement. TEP
26 requests that the Commission approve continuation of most of the waivers addressed in the 1999
27 Settlement Agreement, but that the partial waivers of A.A.C. R14-2-803 and R14-2-804.A not be
28 continued. The Company argues that if the waivers are not extended, the resultant reporting

1 requirements would be burdensome and unnecessary. Moreover, TEP argues that the waivers have
2 been in effect for over ten years with no ill effects.

3 14. As discussed in more detail below, TEP requests the continuation of the following
4 waivers contained in the 1999 Settlement Agreement:

5 (a) Section 12.1(3): New Director Affiliate Transaction Report required by Decision No.
6 57586 (October 11, 1991);

7 (b) Section 12.1(f): Investment Subsidiary Liquidation Report and Purchase Agreement
8 Summary required in Decision No. 58316 (June 9, 1993);

9 (c) Section 12.1(n): Cost Containment Report required by Decision No. 59594 (March 29,
10 1996);

11 (d) Portions of Section 12.1(c): Conditions 2, 13 and 17 in full, and Conditions 12, 26 and 27
12 in part, of Decision No. 60480 (November 25, 1997); and

13 (e) Section 12.1(b): Portions of the Public Utility Holding Companies and Affiliated Interest
14 Rules.

15 Decision No. 57586 – New Director Affiliate Transactions Report

16 15. Decision No. 57586 was issued in the midst of TEP's financial crisis. It resolved the
17 pending rate case by approving the 1991 Settlement Agreement, but also added language which
18 addressed the Commission's concerns about consulting contracts and contracts for goods and services
19 between TEP and current and former members of the TEP Board of Directors and their family
20 members, and between TEP and current and former officers and managers of TEP. This Decision
21 required TEP to submit a report at the appointment of each new member to the TEP Board of
22 Directors which would disclose the new member's current and prior associations with TEP, its
23 affiliates and subsidiaries for the past ten years.

24 16. The 1999 Settlement Agreement granted a waiver of this requirement, and TEP
25 requests that the waiver be continued.

26 17. TEP states that since this requirement was implemented, the Affiliated Interest Rules
27 have gone into effect, the Commission approved a holding company for TEP, and TEP's parent
28 company, UniSource, a publically traded company, is subject to numerous federal laws and

1 regulations, including Sarbanes-Oxley. TEP argues the reporting requirement is unnecessary and
2 burdensome.

3 18. Staff states that it is not aware of any improprieties or alleged improprieties regarding
4 TEP's or UniSource's Board of Directors contracts with the UniSource subsidiaries. Staff is not
5 aware of any similar requirement imposed on other Arizona utilities. Staff notes that TEP has had at
6 least two rate cases since this requirement was put in place. Staff recommends that the waiver of this
7 requirement be continued.

8 19. Since the imposition of this New Director Transaction Report in Decision No. 57586,
9 there have been no allegations or improprieties concerning TEP's or UniSource's Board of Directors
10 contracts with affiliates. With the implementation of the Affiliated Interest Rules and the creation of
11 UniSource, a publicly traded company, there are other safeguards to prevent the abuses that led to the
12 imposition of the reporting requirement. TEP's request and Staff's recommendation to continue the
13 waiver of this reporting requirement is reasonable and should be granted.

14 Decision No. 58316 - Liquidation Reports

15 20. Decision No. 58316 required reporting on the liquidation of TEP's former investment
16 in two subsidiaries –Tucson Resources, Inc. and Sierrita Resources, Inc.

17 21. TEP states that because these entities have been liquidated, TEP should not be
18 required to file anything further on those liquidations.

19 22. The 1999 Settlement Agreement waived the reporting requirements because the
20 liquidations had been accomplished and the reporting requirement was irrelevant.

21 23. Staff agrees with TEP's request to extend the waiver.

22 24. We concur. The need for the liquidation report is no longer relevant and the waiver
23 should continue.

24 Decision No. 59594 – Cost Containment Reports

25 25. Decision No. 59594 approved the 1995 Settlement Agreement in a TEP rate case. The
26 1995 Settlement Agreement contained a moratorium on rate increases until 2000. The focus of the
27 1995 rate case was cost containment, and the Decision required TEP to “provide Staff with an annual
28 report providing a description and quantification of the effects of TEP's ongoing cost containment

1 efforts” and to file such report no later than April 15th of each year.

2 26. TEP states that there have been many intervening events since Decision No. 59594
3 was issued. The most recent was TEP’s 2008 Settlement Agreement which contained a four-year
4 moratorium on rate increases. TEP argues that the Commission has had opportunity to examine
5 TEP’s operational expenses, and that the record shows that TEP has been successful containing costs
6 and increasing its equity. TEP asserts as well, that the current moratorium gives ample incentive for
7 it to keep expenses as low as possible. TEP notes that the 2008 Settlement Agreement did not include
8 a cost containment reporting requirement. TEP states that re-instituting the Cost Containment Report
9 from 1996 is unnecessary and burdensome, and thus, the waiver of this reporting obligation should be
10 extended.

11 27. Staff states that the cost containment reporting requirement is contained within a
12 section of the 1995 Settlement Agreement entitled “Moratorium Period,” and that this section also
13 discusses the possibility of rate case settlements and mergers during the moratorium period. Staff
14 states that it could be deduced that the cost containment reports may have only been required during
15 the moratorium period to keep the Commission informed of TEP’s efforts to contain costs between
16 rate cases.

17 28. Staff believes that because a full TEP rate case has been conducted since the initial
18 requirement, and the Commission has had the opportunity to determine which of TEP’s costs were
19 unreasonable, the waiver of the 1995 requirement to file cost containment reports granted in the 1999
20 Settlement Agreement should be continued.

21 29. We agree. In light of the intervening rate cases this reporting requirement is not
22 necessary, and the waiver should be extended.

23 Decision No. 60480 – Holding Company Order Conditions

24 30. Decision No. 60480 approved TEP’s application to form a public holding company—
25 namely UniSource. The Decision imposed 28 conditions on TEP, UniSource and its sister
26 companies. These conditions included filing requirements (in addition to those required by the
27 Holding Company Rules), and capital structure limitations and addressed cost allocation procedures,
28 marketing standards, and other issues. Of the 28 conditions imposed by Decision No. 60480,

1 Condition Nos. 2, 12, 13, 17, 26 and 27 were waived, or partially waived, by Section 12.1(c) of the
2 1999 Settlement Agreement.

3 31. TEP states that the waivers may need to be modified slightly to reflect the acquisition
4 of the Citizens Utilities' gas and electric operations by UniSource and the creation of UNS Gas, Inc.
5 and UNS Electric, Inc. which occurred after the approval of the waivers granted in the 1999
6 Settlement Agreement.

7 Condition 2 – allocation of costs

8 32. Condition 2, waived in full by the 1999 Settlement Agreement, addressed potential
9 subsidies among and between TEP, its subsidiaries and affiliates. This condition requires TEP to
10 charge the higher of fully allocated cost or market price whenever it sells services or goods to
11 affiliates and required affiliates to charge TEP the lower of fully allocated cost or market price.

12 33. TEP asserts that the waiver of Condition 2 should be continued because (1) it could
13 disadvantage UNS Gas, Inc. and UNS Electric, Inc.; (2) the Commission always maintains the ability
14 to order a prudence review; (3) the condition could apply to renewable projects; and (4) the waiver
15 has been in effect for over ten years with no ill effects.

16 34. Staff states that how utilities charge affiliates for services provided to affiliates is an
17 important ratemaking issue. Staff believes there are some economic advantages to sharing services
18 among sister utilities, and if allocation procedures are too complicated or expensive for a utility to
19 accomplish, it may be motivated to not share services even where economies of scale can be
20 accomplished. Staff states that it thoroughly examines allocations of costs and expenses among the
21 UniSource utilities during their rate cases. Staff agrees that placing Condition 2 back into effect
22 would cost TEP considerable time and money and might result in the utilities' loss of mutually
23 beneficial economies of scale. Staff recommends the continued waiver of the condition.

24 35. Cost allocations among and between UniSource and its subsidiaries are thoroughly
25 examined during the utilities' rate cases. With this safeguard against potentially detrimental
26 subsidies, we agree that the waiver of Condition 2 remains in the public interest. Re-imposing this
27 requirement might disadvantage ratepayers of the various utilities.

28 ...

1 Condition 12 – quarterly financial reports

2 36. Condition 12 of Decision No. 60480 required the filing of quarterly consolidated and
3 quarterly individual financial statements for TEP and each “sister” company. The 1999 Settlement
4 Agreement waived the filings for sister companies but maintained annual filings by UniSource and
5 quarterly filings by TEP. SEC filings continued to be made with the Commission.

6 37. TEP requests that the partial waiver remain in effect.

7 38. Staff states that it is unaware of any similar requirement imposed on a utility, other
8 than TEP, to file quarterly financial statements of affiliates and is unaware of any current
9 circumstances under which this information would be useful. Staff states that it has not experienced
10 any inconvenience or impediment to the receipt of appropriate information from TEP during the time
11 this waiver has been in effect. Staff recommends the waiver be continued.

12 39. The Commission has access to the financial reports it requires to monitor the financial
13 condition of TEP and its affiliates without the requirement of Condition 12. We find the request and
14 Staff’s recommendations to be reasonable and that the continued partial waiver of Condition 12 is
15 warranted and in the public interest.

16 Condition 13 - personnel reports

17 40. Condition 13 required TEP to file an annual report which identified any full-time, non-
18 clerical personnel who were moved from TEP to UniSource or any of its subsidiaries during the year.
19 The 1999 Settlement Agreement gave a complete waiver of this condition.

20 41. TEP asserts that requiring a report of this type is unnecessary and burdensome and that
21 the waiver has been in effect for ten years with no ill effect.

22 42. Staff agrees with TEP that the condition would be burdensome and recommends the
23 waiver of the condition be continued.

24 43. We agree that the condition is unnecessary and burdensome and that the waiver should
25 be continued.

26 Condition 17 – limits on affiliate capitalization

27 44. Condition 17 required the total of the debt and equity of TEP’s sister companies to not
28 exceed 30 percent of TEP’s capitalization unless approved by the Commission. The 1999 Settlement

1 Agreement waived this condition in full.

2 45. Subsequent to the initial adoption of this condition, UniSource acquired UNS Gas, Inc.
3 and UNS Electric, Inc. TEP states that the condition could adversely affect timely capitalization of
4 the sister companies. Additionally, TEP asserts that the waiver has been in effect for ten years
5 without adverse effect.

6 46. Staff states that if the condition were re-imposed, depending on the relative growth
7 rates of the UNS companies and TEP, it might complicate financing of the UNS companies or even
8 impact their ability to raise capital in a timely manner. Staff recommends the waiver of the condition
9 be continued.

10 47. We agree with TEP and Staff. The conditions that led to the imposition of this
11 condition have been ameliorated, and if re-imposed, this condition would add an unnecessary
12 restriction that could be detrimental to the UNS companies and their ratepayers.

13 Condition 26 – cost tracking

14 48. Condition 26 set accounting and tracking requirements for the cost of the time spent
15 by TEP employees on mergers, acquisitions and business development. If the activities were
16 substantially for the benefit of TEP, the costs would be recorded above the line and if not, below the
17 line.

18 49. TEP asserts that the specific filing required by the condition is unnecessary and
19 burdensome, and the waiver has been in place for ten years, including through the recent rate case,
20 with no ill effect.

21 50. Staff states that this condition allows TEP and UniSource to determine which costs are
22 incurred for the utility and its customers and which costs are incurred for the holding company and
23 the investors. Staff states that if the Commission were to disagree during a rate case, those
24 accounting entries would be unwound. Also, Staff states that during merger proceedings Staff
25 reviews these costs. Staff asserts that continuing to waive this condition would avoid duplication
26 and Staff recommends that the waiver of this condition continue.

27 51. These costs are reviewed and any disputes adjudicated during rate cases or other
28 merger proceedings. The continued waiver would allow all parties to be relieved of the burden of

unnecessary reports. Thus, we concur with the parties that the waiver of Condition 26 should continue.

Condition 27 – marketing practices

52. Condition 27 of TEP's Holding Company Order addressed the Commission's concerns about potentially unfair marketing practices by new entities formed during divestiture and diversification by TEP or UniSource, and their use of TEP's name or logo in advertisements. It required the filing of licensing agreements, operating and service agreements, business plans, description of promotional campaigns, joint marketing work products, registered logos and trademarks and a description of all products and services offered by TEP and each sister company. The 1999 Settlement Agreement waived the filing of the information.

53. TEP states that although the filing requirement was waived, the Commission can request such information at any time. TEP asserts the requirement is unnecessary and burdensome, and in light of fiscal constraints at this time, does not appear to be the most efficient use of Commission or Company resources. Moreover, TEP states the waiver has been in effect for ten years with no ill effects.

54. Staff believes the majority of the documents and information required by this condition would be filed under A.A.C. R14-2-805. To avoid duplication, Staff recommends the waiver continue to be waived.

55. We concur with the parties. The Commission has access to the information addressed by the condition either in connection with the requirements of A.A.C. R14-2-805, during a rate case, or by request. We find the waiver of Condition 27 can continue without harm to the public interest.

Holding Company Rules

56. The 1999 Settlement Agreement also resulted in some partial waivers from the Holding Company Rules.

R14-2-803 – Organization of Public Utility Holding Companies

57. This Rule requires a utility to file a Notice of Intent when it intends to organize or reorganize a public utility holding company and sets forth the information to be included in the Notice of Intent. The 1999 Settlement Agreement waived the Rule to the extent that TEP would only

1 be required to file the Notice of Intent when TEP was changing its position in the holding company.

2 58. TEP is not requesting the extension of the partial waiver of R14-2-803.

3 59. By not requesting the partial waiver to continue, the Rule will once again apply to any
4 reorganization of the holding company, not just reorganizations involving TEP.

5 60. Staff agrees with TEP that the entire Rule should apply.

6 61. We concur. Since this waiver was granted UniSource has acquired UNS Gas, Inc. and
7 UNS Electric, Inc., and it is appropriate that the Rule apply to changes in the holding company, and
8 not only TEP.

9 R14-2-804.A – Commission Review of Transactions

10 62. Rule R14-2-804.A addresses transaction between a utility and its affiliates and
11 confirms Commission access to TEP's affiliates' books and records. The 1999 Settlement Agreement
12 limited that access to investigations performed during a rate case.

13 63. TEP is not requesting the continuation of the waiver and agrees that this Rule should
14 not be waived.

15 64. Staff agrees the limitation should be discontinued.

16 65. We concur. There is no continuing justification to limit the reach of A.A.C. R14-2-
17 804.A to rate cases.

18 R14-2-805.A – Annual Filing Requirement of Diversification Activities and Plans

19 66. Rule R14-2-805 requires extensive annual filing requirements from both the utility and
20 the holding company. Specifically, Rule 805.A provides:

21 On or before April 15th of each calendar year, all public utilities meeting
22 the requirements of R14-2-802 and public utility holding companies will
provide the Commission with a description of diversification plans for the
current calendar year that have been approved by the Broads of Directors.

23 The subparts of Rule 805.A dictate what information should be provided as part of the annual reports.

24 67. The 1999 Settlement Agreement waived the requirement that the holding company
25 (i.e. UniSource) make the annual filing, but still required annual filings by "only TEP (the UDC),
26 unless the diversification plans or efforts of affiliates are likely to adversely affect the UDC's
27 financial integrity." The 1999 Settlement Agreement limited Rule 805.A.2 to a broad description of
28 the nature of the business of each affiliate, and limited Rule 805.A.6 to disclosure of allocations

1 applicable to the UDC, and reserved the Commission's ability to require disclosure of the bases of
2 other allocations to rate cases. The 1999 Settlement Agreement limited Rules R14-2-805A.9, .10,
3 and .11 to the production of the required documentation to rate cases.

4 68. TEP requests the continued waiver for R14-2-805.A, R14-2-805.A.2, R14-2-805.A.6,
5 and R14-2-805A.9, 10, and 11. TEP asserts the partial waiver relieved TEP of burdensome
6 accounting and filing requirements and remains appropriate. TEP states further that the modification
7 to Rule 805 has been in place for ten years without ill effects.

8 69. Staff recommends that the wavier related to R14-2-805.A should not be extended.
9 Staff believes that significant diversification efforts by UniSource could place the utilities at risk.
10 Staff asserts that the Holding Company Rules were created to protect the utilities and their ratepayers
11 from the imprudent actions of their holding company parents. Staff notes that the waiver was
12 received during a time when competition in the electric utility industry was expected and utilities or
13 their holding companies may have needed more flexibility to form or disband without Commission
14 approval. Staff argues that those factors no longer apply. Staff states further that it if the
15 Commission adopts the recommendation to waive Condition 27 as well as this portion of Rule 805, it
16 would defeat one of the purposes of the Holding Company Rules, which is the reporting of
17 transactions and providing contracts between the utility and its affiliates to verify that the affiliates
18 are not treating the utility unfairly.

19 R14-2-805.A.2

20 70. Rule R14-2-805.A.2 requires utilities to provide a "brief description of the business
21 activities conducted by the utility's affiliates with whom transactions occurred during the prior year
22 including any new activities not previously reported." The waiver contained in the 1999 Settlement
23 Agreement allows TEP to provide only a "broad description of the nature of the business of each
24 affiliate."

25 71. Staff states that after its review of TEP's 2008 annual holding company filing, it
26 believes TEP's descriptions of the business activities are so broad that the reader cannot develop an
27 understanding of the activities of the affiliates. According to Staff, one affiliate is described as
28 engaging in the "the business of maintaining miscellaneous assets and property." Staff believes that if

1 the filings are to be useful in determining the risks of affiliate activities, then the waiver of R14-2-
2 805.A.2 should not be extended.

3 R14-2-805.A.6

4 72. R14-2-805.A.6 addresses the allocation processes by which costs are assigned
5 between the holding company and the affiliates and requires a thorough discussion of the allocations
6 of plant, revenues and expenses from the holding company to the affiliates. The waiver makes this
7 Rule applicable only to TEP.

8 73. Staff believes that the allocations from the holding company to the affiliates, including
9 TEP, can be the source of unfair cost sharing. Staff states that one of the purposes of the Rules was
10 to protect the utilities from paying more than their share of common costs. Thus, Staff recommends
11 the Commission not continue the waiver of this Rule.

12 R14-2-8-5.A.9, .10 and .11

13 74. Rules R14-2-805.A.9, .10 and .11 require the annual filing of contracts for goods or
14 services between the utility and its affiliates.² The waiver limits the production of those documents to
15 rate cases. Staff agrees that the waiver is appropriate and should be continued. Staff states these
16 documents are useful during rate cases where they would be reviewed for reasonableness and
17 prudence. Staff states further that re-filing the same contract year after year would not be useful.

18 75. We concur with Staff's recommendations concerning R14-2-805.A and its subsections.
19 TEP did not object to Staff's recommendations. Staff's recommendations strike a balance between
20 eliciting information that will be useful to monitoring the risk of the holding company structure and
21 relieving TEP from burdensome filing requirements that do not materially or effectively advance the
22 goals of Commission oversight.

23 **CONCLUSIONS OF LAW**

24 1. TEP is a public service corporation within the meaning of Article XV of the Arizona
25 Constitution and A.R.S. §§ 40-222, 250, 251, and 252.

26
27 ² Rule 805.A.9 requires providing "contracts or agreements to receive, or provide management, engineering, accounting,
28 legal, financial or other similar services between a public utility and an affiliate." 805.A.10 requires providing "contracts
or agreements to purchase or sell goods or real property between a public utility and an affiliate." 805.A.11 requires
providing "contracts or agreements to lease goods or real property between a public utility and an affiliate."

2. UniSource is a Public Utility Holding Company pursuant to A.A.C. R14-2-801 et seq.
3. The Commission has jurisdiction over TEP and the subject matter of the application.
4. Staff's recommendations as set forth herein are reasonable and in the public interest and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the waiver of the New Director Affiliate Transactions Report granted in Decision No. 62103 and the 1999 Settlement Agreement shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier granted in Decision No. 62103 and the 1999 Settlement Agreement of the Liquidation Report shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier granted in Decision No. 62103 and the 1999 Settlement Agreement of the Cost Containment Reports required by Decision No. 50594 shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier of Condition 2 to Decision No. 60480, shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the partial wavier of Condition 12 to Decision No. 60480, shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier of Condition 13 to Decision No. 60480, shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier of Condition 17 to Decision No. 60480, shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier of Condition 26 to Decision No. 60480, shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier of Condition 27 to Decision No. 60480, shall continue until further Order of the Commission.

IT IS FURTHER ORDERED that the wavier of A.A.C. R14-2-803 and R14-2-804.A granted in Decision No. 62103 and the 1999 Settlement Agreement is eliminated and these Rules shall apply

1 to UniSource Energy Corporation, Tucson Electric Power and their affiliates in their entirety.

2 IT IS FURTHER ORDERED that the wavier of A.A.C. R14-2-805.A, 805.A.2, and 805.A.6
3 granted in Decision No. 62103 and the 1999 Settlement Agreement shall not be continued, and these
4 Rules shall apply to UniSource Energy Corporation, Tucson Electric Power and their affiliates in
5 their entirety.

6 IT IS FURTHER ORDERED that the wavers of A.A.C. R14-2-805.A.9, .10 and .11 granted
7 in Decision No. 62103 and the 1999 Settlement Agreement shall continue until further Order of the
8 Commission.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN

COMMISSIONER

14
15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
18 Executive Director of the Arizona Corporation Commission,
19 have hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this _____ day of _____, 2009.

22 ERNEST G. JOHNSON
23 EXECUTIVE DIRECTOR

24
25 DISSENT _____

26
27 DISSENT _____

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